

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOSHUA D. WILLIAMS,)	CASE NO. 3:20-cv-02187
)	
Petitioner,)	JUDGE DAVID A. RUIZ
)	
V.)	
)	
WARDEN KEITH FOLEY,)	
)	MEMORANDUM OPINION AND ORDER
Respondent.)	
)	

This matter is before the Court on the Report and Recommendation of Magistrate Judge William H. Baughman, Jr. (R. 25).¹ Petitioner Joshua D. Williams, *pro se*, filed a multi-claim petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on September 28, 2020. (R. 1). On December 28, 2020, Respondent Warden Keith Foley filed the Return of Writ (R. 9), and subsequently filed two Supplements to the Return (R. 10; R. 17). On February 26, 2021, Petitioner filed the Traverse to the Return. (R. 14). Also pending before the Court are two motions from Petitioner—the first for leave to supplement the Traverse (R. 18) and the second moves the Court to dismiss, or in the alternative, objects to, Respondent’s second Supplement to the Return (R. 20). Respondent has opposed Petitioner’s Motion to Supplement (R. 21), to which Petitioner has replied (R. 23).

On August 19, 2022, the Magistrate Judge issued his Report and Recommendation (R&R) that (1) recommended the Court deny Petitioner’s two pending Motions (R. 18 and R. 20), and (2) considered each of Petitioner’s claims in the petition and recommended the Court

¹ This case was referred to the magistrate judge pursuant to Local Rule 72.2.

dismiss part of the petition as procedurally defaulted and/or non-cognizable and deny the remainder of the underlying petition. (R. 25, PageID# 1668). “Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2); *see also* 28 U.S.C. § 636(b)(1); Local Rule 72.3(b). Petitioner has not filed any objections to the Report and Recommendation.

I. Standard of Review for a Magistrate Judge’s Report and Recommendation

The applicable standard of review of a magistrate judge’s report and recommendation depends upon whether objections were made to that report. When objections are made to a report and recommendation of a magistrate judge, the district court conducts a *de novo* review. Fed. R. Civ. P. 72(b)(3) states:

Resolving Objections. The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The text of Rule 72(b)(3) addresses only the review of reports to which objections have been made, but does not specify any standard of review for those reports to which no objections have lodged. The Advisory Committee on Civil Rules commented on a district court’s review of unopposed reports by magistrate judges. In regard to Rule 72(b), the Advisory Committee stated: “When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72 Advisory Committee’s notes (*citing Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879).

“In the Sixth Circuit, failure to object constitutes a forfeiture.” *Schuster v. Comm’r of*

Soc. Sec. Admin., 2022 WL 219327, at *1 (N.D. Ohio Jan. 25, 2022) (Lioi, J.) (*citing Berkshire v. Beauvais*, 928 F.3d 520, 530 (6th Cir. 2019) (“We clarify that forfeiture, rather than waiver, is the relevant term here.”)); *see also Thomas v. Arn*, 474 U.S. 140, 152 (1985) (holding that the Sixth Circuit’s waiver/forfeiture rule is within its supervisory powers and “[t]here is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review a magistrate’s report to which no objections are filed”). Here, the Report and Recommendation placed the parties on notice as to the potential for forfeiture in the event of failure to object. (R. 25, PageID# 1687).

II. Conclusion

The Court has carefully reviewed the Report and Recommendation, finds no clear error, and agrees with the findings set forth therein. The Magistrate Judge’s Report and Recommendation (R. 25) is hereby ADOPTED. Petitioner’s Motion for Leave to Supplement the Traverse (R. 18) and Petitioner’s Motion to Dismiss Respondent’s Supplement to the Return (R. 20) are hereby DENIED, for the reasons set forth in the R&R.

In addition, the Petition (R. 1) is hereby DISMISSED IN PART as procedurally defaulted and/or non-cognizable and the remainder is DENIED because the underlying state appellate court decision was not contrary to the law, as further explained in the R&R.

The matter is hereby DISMISSED.

IT IS SO ORDERED.

Date: September 29, 2022

s/ *David A. Ruiz*

David A. Ruiz
United States District Judge